in Ann. Cas. 1913 A 1012, and in 10 MICH. L. REV. 121, as "an able and logical" discussion of the law. Strangely enough this case, though going on the justice of the case, rejects the Illinois view of reverter to the donor, and makes no distinction between donor and grantor, and this in face of the very clear previous expressions of the South Carolina court *contra*. The case contains an excellent discussion and review of the authorities, and rejects Lord Coke's rule.

Finally it may be noted that none of these cases is decided on the legal reason as distinguished from the equitable justice, of the matter. They do not discuss Professor Gray's thesis that a reversionary right implies tenure, and that the Statute Quia Emptores by ending tenure between foeffer and foeffee of a fee simple incidentally ended all possibility of reverter to donor or grantor, and hence all determinable fees. Thus a late English case, *Hastings Corp.* v. *Letton* (1908), 1 K. B. 378, makes no distinction between lease for years and fee simple. The statute applied only to fee simple estates. If the Statute had that effect then, except in Pennsylvania and South Carolina where tenure exists and the Statute Quia Emptores is not in force, determinable fees with their possibility of reverter are, on reason, extinct, whatever the justice of the case. Their absurdity in the case of trading corporations long ago led the courts to legislate them out of existence without waiting for any statute. See the interesting discussion in *Richards* v. *Coal and Mining Co.* (1909), 221 Mo. 149. And it is precisely in South Carolina where they might in reason be still in force that the latest pronouncement of the highest court is against them on the grounds of justice and equity. A short, but interesting, discussion of the soundness of Professor Gray's position may be read in the review of the first edition of his book on the RULE AGAINST PERPETUITIES in 2 LAW QUART. REV. 394, and in a resulting discussion by Professor Gray and Mr. Challis, two masters in real property law, in 3 LAW QUART. REV. 399, 403. On the whole Professor Gray seems to have the better of the argument and the worst of the decisions, and it is perhaps well that it is so. To base our modern rule as to disposition of the land of a dissolved corporation upon a statute of 1290, and an ancient, though not extinct, concept of tenure, certainly seems undesirable if the result violates our sense of reason and justice. It seems better to distribute such property to those equitably entitled on the facts of each case. Failing any such parties, escheat to the state is just. See 10 MICH. L. REV. 121.

E. C. G.

EVIDENCE—PRESUMPTION OF LEGITIMACY.—The present-day status of the old common law rule aimed at preventing impeachment of the legitimacy of children born in wedlock, is presented by the opinion in *Re McNamara's Estate,* and *McNamara* v. *McNamara et al,* 183 Pac. 552.

The case involved the question of whether the son of Mrs. B. was legitimate, and therefore entitled to inherit from her husband. The son was born to Mrs. B. on the 24th of October, 1914. Mrs. B. had left her husband on the 24th of December, 1913, and had not seen him in the interim under circumstances permitting intimacy between them.

The court, after finding under the rule of judicial notice, that it was possible for a child to have been conceived on a particular date and not be born until ten calendar months later, (the period involved in this case), then decided that whether the child was that of the husband, or of another with whom Mrs. B. cohabited from the time of leaving her husband on the 23rd of December, 1913, until after the child was born, was a question of fact to be determined upon evidence submitted, with the presumption obtaining that because the child was born in wedlock, he was legitimate; a presumption not conclusive, but disputable.

A dissenting opinion was filed by Melvin, J., stating the rule to be, "if it appears, that by the laws of nature, it is possible that the husband is the father, that is, if it appears that the husband had intercourse with the mother during the period of possible conception, legitimacy is conclusively presumed". The judges were in accord upon the proposition that such intercourse would be presumed up to the time of the separation.

There is little doubt that the rule as first formulated in English law, was one which conclusively presumed that a child born in wedlock was legitimate, and permitted no evidence to the contrary, except it were offered to prove either impotency of the husband or, that during the period of possible conception the husband was "beyond the four seas." *Reg.* v. *Murrey,* 1 Salk. 122.

A line of more recent important decisions, however, has established in England a doctrine less restricted and to the effect that "the presumption of legitimacy arising from the birth of a child during wedlock, the husband not being found to be impotent, and having opportunities of access to his wife during the period in which a child could be begotten and born in the course of nature, may be rebutted by circumstances indicating a contrary presumption." *Banbury Peerage Case,* 1 Sim. & Stu., 153. The doctrine of this case was followed in *Head* v. *Head,* 1 Sim. & Stu., 150 and *Burnaby* v. *Ballie,* L. R. 42, Ch. Div. 297.

A reasonable construction and weighing of authorities in this country would seem to justify the following conclusions as to the state of the law upon this subject here.

(a) The presumption of legitimacy obtains in all cases where the child is born in wedlock, but this presumption is regarded, not as conclusive, but as rebuttable by evidence which, though it may not show absolute impossibility of parentage by the husband, yet clearly and satisfactorily shows parentage by another.

(b) This rule is not to be construed as giving opportunity for conclusion against legitimacy where the potent husband and his wife were living together, or where reasonable opportunity of access was afforded, during the period when conception probably occurred, though the wife may have been living continuously in adulterous relations with another during the same period.

A reasonable conflict in the evidence upon a question of negligence will carry the case to the jury. Not so with the issue of parentage. The status of legitimacy or illegitimacy is regarded as too important to be overcome by a mere preponderance of evidence. *Scott* v. *Hillenburg,* 85 Va. 245;

Canaan v. *Avery*, 72 N. H. 591; *Grant* v. *Mitchell*, 83 Me. 23; *Metheny* v. *Bohn*, 160 Ill. 267; *State* v. *McDowell*, 110 N. C. 734.

(c) The circumstance that the conception must have been ante-nuptial, does not alter the rule. *Wallace* v. *Wallace*, 137 Ia. 37; *Dennison* v. *Page*, 29 Pa. 420; *Zachman* v. *Zachman*, 201 Ill. 380.

BOYCOTT—MEDICAL ASSOCIATION.—The opinion of McCardie, J., (without a jury), in *Pratt* v. *British Medical Association* (1919), 1 K. B. 244, (noted in the MICHIGAN LAW REVIEW, June, 1919, p. 704), brilliantly reviewing the English cases, merits a fuller statement of the facts and principles involved than was possible in a short note.

The action was by Doctors Burke, Pratt, and Holmes, against the British Medical Association and four of its officers, for damages for conspiracy, *slander* and *libel*.

The Medical Association was incorporated in 1874, "to promote the medical and allied sciences, and to maintain the honour and interests of the medical profession," with the incidental power to carry out these objects. Any registered medical practitioner was eligible to membership, and large numbers of the physicians (more than 50 per cent in the Midland Counties) of England were members; and through its rules and regulations administered by its Council and Ethical Committee, it exerted a powerful influence throughout and beyond the United Kingdom. The members were formed in geographical divisions, composed of those in a particular district, free to govern themselves and make such rules as they deemed expedient, subject to the approval of the Council of the Association. Coventry constituted one division, and a majority of the doctors in this district were members.

In Coventry there had existed for more than eighty years the Coventry Provident Dispensary for securing medical attendance for its 20,000 members and their families, each member paying four shillings, annually, making an income of £4,000, half of which was expended for drugs, druggists and management, the other half going to the doctors constituting the medical staff.

In 1906 a controversy arose between the then medical staff of the Dispensary and the managing committee, and all of the staff resigned. The Committee then invited Doctor Burke, who resided in the Birmingham district, to become a member of the medical staff. He was registered in 1895, and became a member of the Medical Association in 1903. He accepted the call and in June, 1907, moved into Coventry with his family and took up his duties as medical officer of the Dispensary.

In 1904 the Medical Association published "model rules" for divisions (which were adopted by the Coventry division) providing that "no member shall, except in circumstances of great urgency, meet in consultation, or hold any professional relations, with a medical practitioner who shall have been declared by a resolution of the division, if a member, to have broken the rules, or if not a member, to have acted, (after due notice) in contravention of the rules, or who, whether a member or not shall have been declared by the division to have been deemed guilty of conduct detrimental to the honour and interests of the profession." In April, 1906, the Coventry division re-